Supreme Court, U.S.
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No. 96-1720

In The

Supreme Court of the United States

October Term, 1996

PHILLIP JEROME JONES,

Petitioner,

vs.

THE STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals, Ninth Supreme Judicial District at Beaumont, Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Does the conviction herein violate Federal standards regarding sufficiency of the evidence on the basis that the evidence failed to establish the *actus reus* of the offense, thereby deciding an important question of federal law in a way that conflicts with relevant decisions of this Court?

(2) Does the decision of the Court of Appeals deny petitioner due process of law by failing to review the appellate complaint concerning factual sufficiency of the evidence?

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APPENDIX

Appendix A — Brief for the State of Texas to the Court of Appeals, Ninth Supreme Judicial District, Beaumont, Texas 1a

Respondent, the State of Texas respectfully requests that this Court deny the Petition for Writ of Certiorari which seeks review of the decision of the Court of Appeals, Ninth Supreme Judicial District at Beaumont, Texas which is reprinted in the Petition for Writ of Certiorari as Appendix A.

STATEMENT OF THE CASE

The facts of this case are clearly stated in the Statement of Relevant Facts of Respondent's brief before the Court of Appeals, Ninth Supreme Judicial District at Beaumont, Texas reprinted as Appendix A to this response.

REASONS FOR DENYING THE WRIT

I.

THE COURT OF APPEALS DID NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS BY REFUSING TO REVIEW THE JURY'S FINDINGS CONCERNING FACTUAL SUFFICIENCY OF THE EVIDENCE.

Petitioner waived any right to a review of the jury's decision based upon alleged factual insufficiency because Petitioner failed to properly brief the issue. *Lawton v. State*, 913 S.W. 2d 542, 558 (Tex. Crim. App. 1996). Tex. R. App. P. 74(f) states in pertinent part, "The argument shall include: (1) a fair, condensed statement of the facts pertinent to such points, with reference to the pages in the record where the same may be found; and (2) such discussion of the fact and the authorities relied upon as may be requisite to maintain the point at issue." The Court of Appeals correctly held that Petitioner failed to comply with Tex. R. App. P. 74(f)(2) when presenting the case on appeal.

Petitioner identified the sole point of error in his brief to

the Court of Appeals as "State's evidence was legally and factually insufficient to support the jury verdict that Defendant, Phillip Jerome Jones, intentionally and knowingly possessed cocaine in the automobile." Petitioner proceeded to brief the issue without arguing any distinction between the standards for determining legal and factual sufficiency. The standard of review for sufficiency of the evidence in Texas at the time that the case was tried and the briefs were presented to the Court of Appeals, was whether or not when the appellate court reviewed all the evidence in the light most favorable to the verdict any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Jackson v. State*, 672 S.W. 2d 801 (Tex. Crim. App. 1984); *Thompson v. State*, 697 S.W. 2d 413 (Tex. Crim. App. 1985).

All cases cited by Petitioner in his original brief to the Court of Appeals were based upon the *Jackson v. Virginia* standard of reviewing sufficiency of the evidence. At no time did Petitioner ever file a supplemental brief or argue that the proper standard of review was something other than *Jackson v. Virginia*.

Petitioner cannot, for the first time, argue that a different standard now applies under *Clewis v. State*, 922 S.W. 2d 126 (Tex. Crim. App. 1996). Further, the *Clewis* standard for factual sufficiency of the evidence, which is now a proper standard of review for factual sufficiency in Texas criminal courts, has no federal counterpart. The standard of review for sufficiency of evidence (factual or legal) in federal criminal cases is still *Jackson v. Virginia*.

II.

THERE IS NO CONFLICT AMONG ANY JURISDICTIONS WITH RESPECT TO THE SUFFICIENCY OF THE EVIDENCE STANDARD.

The standard of review for sufficiency of evidence in federal criminal cases is *Jackson v. Virginia*. The standard of review applied by the Court of Appeals in this case was that of *Jackson v. Virginia*. *See* The Court of Appeals Opinion in Petitioner's Petition Appendix A at App. 3. Petitioner fails to identify which United States Supreme Court decisions and Texas Court of Criminal Appeals decisions with which the lower Texas Appellate Court is in conflict. In reviewing the law applied by the various courts, the federal standard of review for sufficiency of the evidence is that outlined in *Jackson v. Virginia*. This same standard was applied by the United States Court of Appeals, Fifth Circuit in *United States v. Del Aguila-Reyes*, 722 F.2d 155, 157 (5th Cir. 1983) and *United States v. Heacock*, 31 F.3d 249, 251-252 (5th Cir. 1994). The same standard outlined in *Jackson v. Virginia* has long been the standard applied by the Texas Court of Criminal Appeals to review evidentiary sufficiency. *See Jackson v. State*, 672 S.W. 2d at 801; and *Thompson v. State*, 697 S.W. 2d at 413. (The distinction between a review of legal sufficiency under *Jackson v. Virginia* versus factual sufficiency under *Clewis*, is a recent development in Texas criminal law which has no corresponding basis under federal law. The *Clewis* court continues to identify the proper standard of review for legal sufficiency as that outlined in *Jackson v. Virginia*). Finally, the standard for review as applied by the Ninth Court of Appeals at Beaumont, Texas is also *Jackson v. Virginia*. *See Dixon v. State*, 918 S.W. 2d 678, 679 (Tex. App. — Beaumont 1996, no pet.). There is no conflict among the jurisdictions regarding the proper standard of review for sufficiency of the evidence which lends itself to review by this Honorable Court.

III.

THE CASES RELIED UPON BY PETITIONER TO ALLEGE THAT RESPONDENT'S CASE WAS FACTUALLY INSUFFICIENT USE THE OUTSTANDING REASONABLE HYPOTHESIS THEORY WHICH HAS BEEN OVERRULED BY THE TEXAS COURT OF CRIMINAL APPEALS.

Petitioner argues that the evidence presented by Respondent at trial was insufficient to prove an "affirmative link" between Petitioner and the rock of crack cocaine found in his vehicle. Petitioner relies upon a line of cases supported by *Humason v. State*, 728 S.W. 2d 363 (Tex. Crim. App. 1987). *Humason* required a different standard of proof for circumstantial evidence cases such that a conviction based upon circumstantial evidence could not be sustained if the state's proof did not exclude every other reasonable hypothesis except the guilt of the Defendant. *Id.* at 366. All of Petitioner's cases cited for the proposition that Petitioner was not affirmatively "linked" to the cocaine in his possession rely upon *Humason* or other cases citing the outstanding reasonable hypothesis theory. *See Allen v. State*, 786 S.W. 2d 738, 740 (Tex. App. — Fort Worth 1989, pet. dism'd); *McBride v. State*, 780 S.W. 2d 823, 824-825 (Tex. App. — San Antonio 1989, no pet.); *Baltazar v. State*, 638 S.W. 2d 130, 131 (Tex. App. — Corpus Christi 1982, no pet.); and *Zertuche v. State*, 774 S.W. 2d 697, 700 (Tex. App. — Corpus Christi 1989, pet. ref'd).

Humason and Petitioner's line of cases were brought into question in *Geesa v. State*, 820 S.W. 2d 154 (Tex. Crim. App. 1991). There was, for a time, a question in Texas courts as to whether the "affirmative links" analysis or the "outstanding reasonable hypothesis" test were applicable in a review of the sufficiency of the evidence in Texas criminal cases. *Brown v.*

State, 911 S.W. 2d 744 (Tex. Crim. App. 1995). *Brown* overruled the outstanding reasonable hypothesis test when reviewing circumstantial evidence in Texas criminal cases. This effectively undermines the reasoning of *Humason* and its progeny which are the whole basis of Petitioner's argument. The Court of Criminal Appeals was clear when it stated

> Nevertheless, some of our precedents, including *Humason*, do invoke the "outstanding reasonable hypothesis" standard in connection with a search for evidence linking the accused to illegal drugs. Clearly, any aspect of those cases which rely on that standard no longer control. The ultimate consequence is that each defendant must still be affirmatively linked with the drugs he allegedly possessed, but this link need no longer be so strong that it excludes every other outstanding reasonable hypothesis except the defendant's guilt. *Brown v. State*, 911 S.W. 2d at 748.

The outstanding reasonable hypothesis test was abandoned by the Fifth Circuit Court of Appeals in *United States v. Bell*, 678 F.2d 547 (5th Cir. 1992), *aff'd*, 462 U.S. 356 (1983). Therefore, the failure of the Texas criminal courts to use the outstanding reasonable hypothesis test in reviewing circumstantial evidence convictions is not in conflict with the federal courts or the United States Supreme Court.

IV.

THE EVIDENCE AT TRIAL WAS SUFFICIENT TO PROVE THAT PETITIONER INTENTIONALLY AND KNOWINGLY POSSESSED COCAINE.

The *Brown* court pointed out that the affirmative links analysis is a means to an end and not an end in itself. *Brown v. State*, 911 S.W. 2d at 748. Petitioner's mere presence where drugs are found, without any other evidence, is not sufficient to establish unlawful possession of a controlled substance. *McGoldrick v. State*, 682 S.W. 2d 573, 578-579 (Tex. Crim. App. 1985). The facts in this case include more than mere presence and clearly support the jury's verdict either under a *Jackson v. Virginia* legal sufficiency analysis or a *Clewis* factual sufficiency analysis.

The facts in this case have been recognized by Texas courts as tending to establish an affirmative link proving criminal knowledge and intent. *Dixon v. State*, 918 S.W. 2d at 681. Petitioner was stopped after being parked in front of a known crack house at 1:00 a.m. A single rock of crack cocaine was found in his vehicle. The drugs were hidden under the Petitioner's drivers seat within his reach. Petitioner was the sole occupant of the vehicle at the time of the stop. Petitioner further made *res gestae* statements at the scene which clearly support the jury's verdict in this case. Petitioner stated he owned the vehicle. Petitioner stated that no one had access to his vehicle prior to the stop. Petitioner stated that his brother had cleaned the car earlier that afternoon and no one had been in his car. When the officer presented the rock of crack cocaine and asked Petitioner about the, as yet, unidentified object, Petitioner immediately responded that the officer had not found "that" in his vehicle. Petitioner did not express any shock or surprise at the officer's presentation of the drugs to him at the scene.

Petitioner's reaction was such that he knew and understood what was being presented to him by the police officer at the time. Further, the only explanation offered by Petitioner was the unfounded allegation that the officer had planted the rock of crack cocaine in his vehicle. There is no evidence to substantiate this allegation.

Petitioner argues that his calm attitude cannot be used to incriminate him. A lack of concern or surprise has been held to be a proper inference of knowledge. *See United States v. Del Aguila Reyes*, 722 F.2d at 158; and *Castellano v. State*, 810 S.W. 2d 800, 807 (Tex. App. — Austin 1991, no pet.). Use of the affirmative links analysis is not merely an exercise of counting the total number of "links" the defendant has to the drugs, but moreover, a method of looking at the totality of the circumstances and determining whether or not, when viewed in the light most favorable to the verdict, the evidence is sufficient to support the jury's verdict.

CONCLUSION

Petitioner, having waived any right to a factual sufficiency review under state law, and having failed to establish any conflict between this Court or other courts and the Court of Appeals below, is not entitled to have his conviction reviewed by this Honorable Court, and therefore, Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — BRIEF FOR THE STATE OF TEXAS TO THE COURT OF APPEALS, NINTH SUPREME JUDICIAL DISTRICT, BEAUMONT, TEXAS

NO. 09-95-00126-CR

IN THE COURT OF APPEALS
NINTH SUPREME JUDICIAL DISTRICT
BEAUMONT, TEXAS

PHILLIP JEROME JONES, Appellant

VS.

THE STATE OF TEXAS, Appellee

Appealed from the 260th District Court
Orange County, Texas
Cause No. D-940,393-CR

STATE'S BRIEF

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ORAL ARGUMENT REQUESTED

* * *

Appendix A

NO. 09-95-00126-CR

IN THE COURT OF APPEALS
NINTH SUPREME JUDICIAL DISTRICT
BEAUMONT, TEXAS

PHILLIP JEROME JONES, Appellant

VS.

THE STATE OF TEXAS, Appellee

TO THE HONORABLE JUDGES OF SAID COURT:

The Appellant, Phillip Jerome Jones, was convicted of the felony offense of possession of a controlled substance, to wit: cocaine, upon a plea of "not guilty" in the 260th Judicial District Court, Orange County, Texas, Buddie J. Hahn, presiding Judge.

PRELIMINARY STATEMENT

Appellant, Phillip Jerome Jones, was indicted under Cause No. B-940,393 for felony possession of a controlled substance, to wit: cocaine. On March 20, 1995, the case was called to trial, and a jury was impaneled and selected. On March 21, 1995, Appellant pled "not guilty". The jury found the Appellant guilty on March 22, 1995. On April 17, 1995, punishment evidence was presented to the trial court, and the trial court assessed punishment at five years in the Texas Department of Criminal Justice — Institutional Division and a fine of $1,000.00. Said judgment and sentence were entered by the trial court on April 24, 1995.

Appendix A

APPELLANT'S GROUND OF ERROR NUMBER ONE — RESTATED

STATE'S EVIDENCE WAS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE JURY VERDICT THAT DEFENDANT, PHILLIP JEROME JONES, INTENTIONALLY AND KNOWINGLY POSSESSED COCAINE IN THE AUTOMOBILE.

STATEMENT OF RELEVANT FACTS

The State called two officers from the City of Orange Police Department to testify regarding the facts surrounding the arrest of Appellant, Phillip Jerome Jones. Officer A.C. "Tony" Britt testified that on Thursday, February 24, 1994, at approximately 1:00 a.m., he was patrolling the Navy Park addition in the City of Orange. (Vol. 3 pp. 31-32) Officer Britt identified this as a known drug trafficking area. (Vol. 3 p. 33) Officer Britt had been a peace officer with the City of Orange Police Department for approximately three years and was familiar with the general area. (Vol. 3 pp. 28, 34) During Officer Britt's patrol that evening he identified a light gray Ford Probe parked in front of 302 and 304 Knox Street. (Vol. 3 p. 36) 304 Knox is known to officer Britt as a location of drug activity. (Vol. 3 p. 40)

At approximately 1:00 a.m., Officer Britt observed a light gray Ford Probe fail to stop at a marked intersection. (Vol. 3 p. 37) This vehicle was previously identified as being parked at 304 Knox Street. (Vol. 3 p. 36) Upon observing the traffic violation, Officer Britt radioed Officer Wes Journeay of the City of Orange Police Department. Officer Journeay was also on patrol in the Navy Park addition. (Vol. 3 p. 37) Officer Journeay pulled in behind the gray Ford Probe and observed the vehicle

fail to signal a right turn. (Vol. 3 pp. 102-103) Officer Journeay pulled the gray Ford Probe over and he observed one occupant driving the vehicle. (Vol. 3 pp. 103,107) Officer Journeay began to issue a citation, for the observed traffic violation, to the driver who was identified by driver's license as Phillip Jerome Jones. (Vol. 3 p. 105) At this time, Officer Britt arrived on the scene and asked to look in Appellant's light gray Ford Probe. (Vol. 3 pp. 42, 43) Appellant verbally consented by responding "Yeah. You're the police. Go ahead." (Vol. 3 p. 43)

During his search Officer Britt found a small white rock suspected to be crack cocaine under the driver's seat. (Vol. 3 p. 43) Upon analysis by Sarah Skiles of the Jefferson County Regional Crime Lab, the substance was determined to be 0.17 grams of crack cocaine. (Vol. 3 pp. 20,21) When officer Britt showed the small white rock to the Appellant and asked if he could explain it, Appellant, Jones, responded that the rock was not his. Further, Appellant stated that no one had been in his car to leave the rock; that his brother had cleaned his car earlier that afternoon; and that nothing was left in his car by anyone. When officer Britt asked "Well, how did the rock get in your car?", Appellant responded "Well, I guess you planted it there." (Vol. 3 pp. 44,45).

Officer Britt's testimony corroborated Appellant's statement that the car had recently been cleaned, it was very clean inside and was not cluttered. (Vol. 3 pp. 45,86,93) Officer Britt testified that the location of the rock was three to four inches under the driver's seat and accessible to the driver. (Vol. 3 pp. 48,53) Officer Britt's testimony reiterated several times that Appellant stated Officer Britt had not gotten "that" (the rock of crack cocaine) out of his (Appellant's) car. (Vol. pp. 44-45, 90,92,93) Further, Officer Britt testified that Appellant's demeanor when

confronted with the rock of crack cocaine did not exhibit any signs of shock, surprise, or excitement. (Vol. 3 pp. 54,55)

Officer Journeay testified corroborating Officer Britt's testimony that the Defendant was alone in the vehicle at the time of the stop, and that no one came near the car during the stop. (Vol. 3 p. 107).

The Appellant called no witnesses to testify in support of Appellant's off-the-wall allegation that Officer Britt had planted the rock of crack cocaine in the Appellant's car. Further, Appellant called no witnesses to refute any of the testimony presented by the State in this matter. The only testimony upon which the jury could rely was that presented by the State.

STATE'S ARGUMENT AND AUTHORITIES

In reviewing the sufficiency of the evidence, an Appellate Court must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979); *Jackson v. State*, 672 S.W.2d 801 (Tex.Crim.App. 1984). Further, the appeals court must review all of the evidence in the light most favorable to the prosecution. *Thompson v. State*, 697 S.W.2d 413 (Tex.Crim.App. 1985).

The essential elements for Possession of Cocaine under V.T.C.A., Health & Safety Code (1992) § 481.115 are: 1) the defendant; 2) intentionally and knowingly possessed; 3) a controlled substance, to wit: cocaine.

Appellant complains that the State failed to prove possession beyond a reasonable doubt. Under V.T.C.A., Health & Safety

Code (1992) § 481.002 (38), "possession" means "actual care, custody, control or management."

Although Appellant analyzes this case in terms of "affirmative links," in light of *Jackson v. Virginia* and this Appellate Court's opinion in *Eaglin v. State*, 872 S.W.2d 332 (Tex.App. — Beaumont 1994), it appears that a slightly different analysis applies. The standard as stated in *Eaglin* is whether, after considering all of the evidence in the light most favorable to the verdict, any rational trier of fact could have found that Appellant intentionally or knowingly possessed the contraband in question beyond a reasonable doubt. *Eaglin* at 337. Further, it is clear that "in circumstantial evidence cases, it is not necessary that every fact point directly and independently to the Defendant's guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating evidence." *Eaglin* at 337.

In this specific case, two issues must be considered. Did the Appellant have: 1) control of the contraband in question; and 2) knowledge of the contraband in question.

What evidence was presented at the trial court level to prove that Appellant exercised control over the cocaine? The evidence presented showed the Appellant was in sole possession of the vehicle at the time of the traffic stop. (Vol. 3 pp.42, 107) See *Aldridge v. State*, 482 S.W.2d 171 (Tex.Crim.App. 1972). The Appellant identified the car as being his. (Vol. 3 pp. 44-45 90,92,93) See *Moulden v. State*, 576 S.W.2d 817 (Tex.Crim.App. 1978). The Appellant acknowledged that no one else had been in his car to leave the rock of cocaine. (Vol. 3 pp. 44-45, 92) The Appellant acknowledged that his brother had cleaned the car that afternoon, and no one (other than himself) had been in

the car since then to leave the rock of cocaine. (Vol. 3 pp. 44-45,93) The rock of cocaine was found under the driver's seat. (Vol. 3 pp. 43,48,53,93) See *Orosco v. State*, 164 Tex.Cr.R. 257, 298 S.W.2d 134 (1957). The rock was placed in a position easily accessible to the sole occupant, Appellant. (Vol. 3 pp. 47-48,53) See *Hahn v. State*, 502 S.W.2d 724 (Tex.Crim.App. 1973). All these fact taken together provide more than enough evidence for the jury to find that the Appellant did indeed possess the cocaine found in his vehicle.

Did the Appellant have knowledge of the contraband in question? Proving mental state is a difficult proposition. Without the actual statement of a person, it is very difficult to determine their mental culpability for the commission of a crime. Proof of culpable mental state generally relies upon circumstantial evidence. *Gardner v. State*, 736 S.W.2d 179, 182 (Tex.App. - Dallas 1987), *aff'd*, 780 S.W.2d 259 (Tex.Crim.App. 1989). Intentional and knowing possession is an inference that must be drawn by the jury from all of the circumstances. *Eaglin* at 337.

In this case, when the Appellant was shown the "rock" of cocaine, the Appellant responded that the officer had not found that substance in his car and that the officer must have planted it. (Vol. 3 pp. 44-45;93) There is no testimony that Officer Britt had to identify the item to the Appellant. Logically, there is no reason for someone to deny possession of a legal substance. Appellant's definitive denial of possession the small rock implies Appellant knew the substance to be contraband. Appellant at no time questioned Officer Britt regarding the nature of the small rock. Further, Appellant accused Officer Britt of planting the small rock without ever asking Officer Britt what the substance was. A reasonable jury could have, and did, find Appellant knew the substance to be contraband (crack cocaine).

Appendix A

The Appellant's reaction at the scene is further evidence of his culpable mental state. Upon presentation of the rock of crack cocaine by the patrol officer, the Appellant's reactions were somewhat subdued. The Appellant failed to show any shock, surprise, or other reaction of disbelief upon the presentation of the crack cocaine.(Vol. 3 pp. 54-55) Appellant's proffered explanation for the event was that the patrol officer had planted the crack cocaine in his vehicle. (Vol. 3 pp. 44-45;93) Simply because the Appellant has presented a different version of events does not render the State's evidence insufficient in this case. See *Little v. State*, 758 S.W.2d 551, 562-563 (Tex.Crim.App. 1988) *cert. denied*, 488 U.S. 934, 109 S.Ct. 328, 102 L.Ed. 2d 346 (1988). Conceivably, a jury could choose to disbelieve Appellant's unsupported allegation of a drug plant. Further, a reasonable jury could, and did, conclude Appellant failed to react as an innocent person would if drugs were planted in their car or on their person. A jury could also reasonably conclude that being shocked, surprised, and excited, rather than calm, cool, and collected would be the appropriate reaction for someone who did not know that he was carrying drugs in his car.

Officer Britt testified that Appellants car was parked in front of 304 Knox Street earlier. (Vol. 3 pp. 36,40) This house was a site of known criminal activity including possession and/or delivery of illegal drugs, such as crack cocaine. (Vol. 3 pp. 36,40) All of these facts together support the jury's verdict that the Appellant did intentionally or knowingly possess a controlled substance, to wit: cocaine. The Defendant failed to present any contradictory evidence regarding control and knowledge of the contraband in question.

Appellant relies upon *Humason v. State*, 728 S.W.2d 365 (Tex.Crim.App. 1987) for the proposition that mere presence of

the Appellant at the point where the controlled substance was found is not enough to convict him. The State would agree with this proposition generally, but would also point out Appellant's presence was not the only evidence which "links" him to the crack cocaine.

Further, Appellant relies on *Whitworth v. State*, 808 S.W.2d 566, 569 (Tex.App. — Austin 1991), for the proposition that the State has failed to meet the criteria necessary to prove the Appellant was guilty of possession of crack cocaine beyond a reasonable doubt. Appellant misstates the evidence when he says that there is "no evidence that the Appellant has sole access to the vehicle, no evidence of ownership of the vehicle or consciousness of guilt." All of these facts are setforth above in the State's brief and clearly show Appellant's statement to be untrue.

Appellant also relies on *McGoldrick v. State*, 682 S.W.2d 573 (Tex.Crim.App. 1985), to say that the State has failed to meet its burden by not affirmatively linking the Appellant to the cocaine through a showing of the criteria for possession set out in the charge. If this court chooses to analyze this case in terms of "affirmative links" the facts and evidence set out above presented the jury more than enough evidence to find Appellant guilty of possession of crack cocaine beyond a reasonable doubt.

CONCLUSION

In the case at bar, viewing the evidence in the light most favorable to the verdict, the evidence clearly meets the requirement that a rational trier of fact must, and did, find Appellant guilty beyond a reasonable doubt.

Appendix A

PRAYER

WHEREFORE, PREMISES CONSIDERED, since no reversible error is shown, the State respectfully prays that this Court affirm the conviction of Appellant, Phillip Jerome Jones.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to attorney for Appellant, Mr. Sharon Bearden, 116 S. Border, Orange, Texas 77630 via certified mail on this the ___ day of _____, 1995.

/s/ John D. McElroy
John D. McElroy
Assistant County Attorney